Amalgamated Clothing and Textile Workers Local Union 148T, AFL-CIO-CLC (Leshner Corporation) *and* Deborah Susan Blaydes. Case 9-CB-4312

January 20, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On July 8, 1981, Administrative Law Judge Elbert D. Gadsden issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

We disagree with the Administrative Law Judge's conclusion that the Respondent violated Section 8(b)(1)(A) by failing to represent fairly employee Deborah Blaydes.

On April 18, 1979, Blaydes was involved in separate physical altercations during worktime—one with employee Charlene Lewis, the other with employee Connie Butterly. All three employees were fired pursuant to an employer rule against fighting. Thereafter, Blaydes and Lewis filed grievances.

The Administrative Law Judge found that, at the first-step grievance meeting, Plant Manager Paul Moritz stated that the Employer was willing to reinstate Blaydes but not Lewis. The record indicates that the Employer's position was based on its belief that Blaydes had not been the aggressor in either fight and merely had defended herself. The Administrative Law Judge also found that the Respondent's officials, particularly Mary Shirley, financial secretary, responded to the Employer's "offer" by insisting that it was company policy to discharge all employees involved in a fight or none and, therefore, both grievants should be reinstated or neither. At the second grievance meeting, Moritz again stated that the Employer would reinstate Blaydes, but not Lewis, whom Moritz termed a "troublemaker." The Respondent's representatives again insisted that both grievants or neither be reinstated. Because Lewis could not attend the second-step meeting, a third meeting was held so that she could give her version of the events. During that meeting, George Meyer, the Respondent's business representative, requested that both Blaydes and Lewis be reinstated, with Mary Shirley adding that the Employer should reinstate both grievants if it were going to reinstate one. Harold Carpenter, plant supervisor, replied that he would have brought Blaydes back but that "now" he would "have to take it to the Company." Subsequently, the Respondent was notified in writing that both grievances were denied. The Respondent did not process either grievance to arbitration.

The Administrative Law Judge concluded, without supplying a rationale, that the Respondent's refusal to accept the Employer's "offer" to reinstate Blaydes, but not Lewis, and its "squeeze play" of insisting that both employees be reinstated or neither constituted a breach of its duty of fair representation to Blaydes. He further concluded that, having rejected the Employer's "offer," the Respondent's failure to take Blaydes' grievance to arbitration was arbitrary and likewise a breach of its duty of fair representation.

A union breaches its statutory duty of fair representation when its conduct toward a member of the collective-bargaining unit is arbitrary, discriminatory, or in bad faith.[1] There is no evidence or contention that the Respondent's actions regarding Blaydes' grievance were the result of bad faith or hostility toward Blaydes. Nor is there any evidence of disparate treatment. To the contrary, the Respondent, in processing the grievances, argued that both Blaydes and Lewis should be reinstated. Finally, it cannot be said that the Respondent, having decided to process the grievances, did so in a perfunctory manner, for it actively advocated its position. The only issue in this case, therefore, is whether the Respondent, by taking the position that it took and then abandoning Blaydes' grievance short of arbitration, acted arbitrarily. Contrary to the Administrative Law Judge, we find that it did not.

There is nothing in the record to indicate that the Respondent's position that both Blaydes and Lewis be reinstated or neither was anything other than a good-faith, honest attempt to secure the reinstatement of both grievants. The Respondent also owed a duty of fair representation to Lewis. We see no reason why its duty to represent Blaydes fairly and act as her advocate required it to accept the Employer's offer to reinstate Blaydes at the expense of Lewis' continued employment.[2] The

[1] *Truck Drivers, Helpers, Taxicab Drivers, Garage Employees and Airport Employees Local Union No. 335, affiliated with International Brotherhood of Teamsters, Warehousemen and Helpers of America (Monarch Institutional Foods)*, 229 NLRB 1319 (1977), affd. 597 F.2d 388 (4th Cir. 1979).

[2] The Employer's "offer" to reinstate Blaydes was, by its own terms, conditioned upon the Respondent's acceptance of its refusal to reinstate Lewis. At no time did any employer representative offer to reinstate

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Board has held that a union "has a wide range of discretion in serving the unit it represents"[3] and the Respondent's response to the Employer's "offer," a response which sought to obtain the reinstatement of both grievants, certainly falls within that discretion. The Respondent's position was based on the Employer's policy of discharging all employees involved in a fight, or none, and, therefore, it cannot be said to be arbitrary or based on irrelevant considerations. Moreover, while the position taken by the Respondent resulted ultimately in the denial of Blaydes' grievance, it is only through hindsight that the Respondent's good-faith attempts to secure the reinstatement of both Blaydes and Lewis can be called into question.

Nor did the Respondent's failure to arbitrate Blaydes' grievance violate its duty of fair representation. Contrary to the Administrative Law Judge, the mere fact that the Respondent refused to accept the Employer's offer to reinstate Blaydes but not Lewis did not obligate it to process Blaydes' grievance to arbitration. Rather where, as here, a union undertakes to process a grievance but decides to abandon the grievance short of arbitration, the finding of a violation again turns on whether the union's disposition of the grievance was arbitrary or motivated by ill will or other invidious considerations.[4] There is no evidence that the Respondent's failure to invoke arbitration was based on animosity, discrimination towards Blaydes,[5] or irrelevant considerations. Also, the record establishes that, following the denial of the grievances, a discussion on their merits took place during the Respondent's July 1979 union meeting.[6] Thus, this is not a case where a union, having undertaken to process a grievance, abandoned it without reason or merely at the whim of someone exercising union authority.[7] We therefore find that the Respondent did not arbitrarily dispose of Blaydes' grievance and shall dismiss the complaint in its entirety.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint herein be, and it hereby is, dismissed in its entirety.

Blaydes without adding that the Employer would not reinstate Lewis. In his brief to the Administrative Law Judge, the General Counsel, relying on the testimony of Plant Supervisor Carpenter, contended that the "offer" to reinstate Blaydes was, in fact, unconditional. While Carpenter testified that the Employer, by its "offer," was willing to reinstate Blaydes and continue proceesing Lewis' grievance, he also testified that, "When they said all or none, we said if we couldn't take just her [Blaydes] back, we would take none." Of course, the Employer did not need the Respondent's approval before it could unilaterally reinstate Blaydes without reinstating Lewis. However, even assuming that the Employer intended its "offer" to be unconditional, it was not stated in those terms.

[3] *Ohio Valley Carpenters District Council, Local Union No. 415, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Cincinnati Fixtures, Inc.)*, 226 NLRB 1032 (1976); *Truck Drivers, Helpers, Taxicab Drivers, Garage Employees and Local Union No. 355, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Monarch Institutional Foods), supra*. See, generally, *Ford Motor Company* v. *Huffman*, 345 U.S. 330 (1953).

[4] *Local 417, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Falcon Industries, Inc.)*, 245 NLRB 527 (1980).

[5] The Respondent also failed to take Lewis' grievance to arbitration.

[6] Business Agent Meyer, then Grievance Chairman Magnolia King, Financial Secretary Mary Shirley, and employee Barbara Grubb, all testified that, following the discussion, the membership voted not to invoke arbitration. Meyer further testified that the discussion included the likelihood of winning an arbitration. On the other hand, Bea Miranda, the Respondent's president at the time, testified that, although the grievances were discussed at the July meeting, no vote or action was taken. The Administrative Law Judge made no finding on the extent of the discussion or on whether a vote was taken. Nevertheless, it is the General Counsel's burden to prove that the Respondent acted arbitrarily. Since the record establishes that, at a minimum, some discussion on the merits of the grievances preceded the Respondent's failure to invoke arbitration, we cannot find that the Respondent acted arbitrarily or without reason.

[7] *Local 417, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Falcon Industries, Inc.), supra.*

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSDEN, Administrative Law Judge: Upon unfair labor practice charges filed in Case 9-CB-4312 on August 6, 1979, by Deborah Susan Blaydes, an individual, herein called Blaydes or the Charging Party, against Amalgamated Clothing and Textile Workers Local Union 148T, AFL-CIO-CLC, herein called Respondent, a complaint was issued by the Regional Director for Region 9 on behalf of the General Counsel on April 25, 1980.

The complaint alleges in substance that in each of three separate grievance meetings Respondent refused to accept Employer's offer of reinstatement of the Charging Party because Respondent desired Employer to reinstate other discharged employees along with the Charging Party, and Employer refused to reinstate the other dischargees; and that Respondent refused to process to arbitration a grievance concerning the discharge of the Charging Party, pursuant to provisions of the collective-bargaining contract with Employer. By these acts and omissions, the complaint alleges that Respondent failed to represent the Charging Party, for reasons which are unfair, arbitrary, and invidious, thereby resulting in a breach of the fiduciary duty owed employees it represents; and that by such acts and omissions, Respondent has restrained and coerced its employees in the exercise of their protected Section 7 rights, in violation of Section 8(b)(1)(A) of the Act.

The hearing in the above matter was held before me in Cincinnati, Ohio, on April 13 and 14, 1981. Briefs have been received from counsel for the General Counsel and counsel for Respondent, respectively, which have been carefully considered.

Upon the entire record in this case and from my observation of the witnesses, I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

At all times material herein, Employer Leshner Corporation, herein called Employer, an Ohio corporation with an office and place of business in Hamilton, Ohio, has been engaged in the manufacture of textile products.

During the past 12 months, a representative period, Employer, in the course and conduct of its business operations, purchased and received at its Hamilton, Ohio, facility products, goods, and materials valued in excess of $50,000 directly from points located outside the State of Ohio.

The complaint alleges, the Employer admits, and I find that Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Amalgamated Clothing and Textile Workers Local Union 148T, AFL-CIO-CLC, herein called Respondent or Union, is now and has been at all times material herein a labor organization within the meaning of section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

At all times material herein, Respondent, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive bargaining representative for purposes of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment, of all employees of Employer in the following unit:

> All employees in the Old or South Plant in Hamilton, Ohio with the following exceptions: superintendents, foremen, office employees, and watchmen.

At all times material herein the following-named persons occupied the positions set opposite their respective names, and are now, and have been, agents of Respondent within the meaning of Section 2(13) of the Act: Jerilene Miller, steward; Mary Shirley, steward; Bea Miranda, president; Meg King, chief steward; and George Meyer, business agent.

At all times material herein, Respondent and Employer have maintained and enforced a collective-bargaining agreement covering wages, hours, and other terms and conditions of employment of the employees in the unit described above, which agreement includes, *inter alia*, a grievance and arbitration procedure.

The parties herein stipulated that George Meyer is a joint board manager for Respondent and Local 2297; that Respondent, Local 148T, and Local 2297 have the same mailing address: 215 West Wyoming Avenue, Cincinnati, Ohio, and the same telephone number: 761-1797.[1]

B. *The Propriety of Notice of the Charge Upon Local 148T*

The parties herein stipulated that on August 6, 1979, Charging Party (Blaydes) filed a charge against Amalgamated Clothing and Textile Workers Local 2297, AFL-CIO-CLC, and that a copy of said charge was served by registered mail on August 6, 1979. Thereafter, the charge was dismissed by the Regional Director for Region 9 on September 24, 1979, because he concluded that the burden of establishing a violation of Section 8(b)(1)(A) of the Act could not be sustained, and a complaint was not issued. This determination was appealed by Charging Party and sustained. Consequently, a complaint was issued on April 25, 1980, alleging that Local 2297 violated Section 8(b)(1)(A) of the Act by failing to fairly represent the Charging Party (Blaydes) in processing her grievance in reference to her discharge.

An amended complaint was issued on January 19, 1981, correcting the name of Respondent Union to Amalgamated Clothing and Textile Workers Local 148T, AFL-CIO-CLC, and containing the identical allegations set forth in the original complaint. At the hearing herein, the parties stipulated that George Meyer is the joint board manager and business agent for Respondent (Local 148T) and Local 2297; and that Respondent and Local 2297 have the same mailing address, and the same telephone number but separate and distinct bargaining agreements, covering different units of employees of Employer. Nonetheless, counsel for Respondent argues that neither a charge nor an initial complaint was ever filed against Local 148T, but rather, Local 148T was served with an amended complaint without having first been served with a charge addressed to it, or an original complaint. Therefore, counsel for Respondent contends that Local 148T was not properly served according to Board rules, and that the amended complaint herein should be dismissed.

However, the record shows that Meyer testified and counsel for Respondent acknowledged at the hearing that Respondent knew that the charge herein was intended for Respondent (Local 148T); that upon receipt of the charge, George Meyer made arrangements for certain officers of Respondent to meet with the Board agent investigating the charge; and that some of Respondent's officers gave statements to the investigating Board agent. It is also observed by me that the record does not show that Respondent objected to service of the charge or the initial complaint herein prior to service of a copy of the amended complaint. In fact, in paragraph 1 of its answer to the initial complaint, Respondent admits to service of the charge. It is apparent, however, that although Respondent denied such service in its answer to the amended complaint, such denial was not filed until sometime after January 14, 1981, subsequent to some of the investi-

[1] The facts set forth above are undisputed and are not in conflict in the record.

gations to which Manager Meyer assented and with which he cooperated.

Counsel for Respondent renewed its motion for dismissal of summary judgment at the hearing based upon his argument heretofore alluded to.

However, in view of the fact that Manager Meyer accepted a copy of the charge served upon him, admitted that he knew it was intended to be against Local 148T, whom he also represents, and thereafter made arrangements for, and cooperated with a Board investigation of Local 148T officials, pursuant to said charge, I conclude and find that Respondent (Local 148T) was not misled either by the substance of the charge, or by the fact that it was mistakenly addressed to Local 2297. Respondent was not prejudiced by the charge because the allegations contained therein were identical to the allegations in the amended complaint. Although the amended complaint was labeled "amended," it was amended to reflect only Respondent's correct title, not its address or the substance of the allegations. Thus, for all practical purposes, Respondent received a copy of the original complaint bearing its correct name, for which it knew the charge and the original complaint were intended.

For the foregoing reasons, I further conclude and find that the mere technical misnomer of Respondent in the charge and original complaint herein is not a sufficient ground for the dismissal of the amended complaint, pursuant to Section 10(b) of the Act. *American Geriatric Enterprises, Inc., and its wholly-owned subsidiary Hamilton Medical Convalescent Center, Inc.*, 235 NLRB 1532 (1978), and *Ross Sand Company, Inc. d/b/a Rosco Concrete Pipe Co., Inc.*, 219 NLRB 915 (1975). I also find that, since Respondent had actual notice of the charge (Meyer knew the charge was for Local 148T), said charge and amended complaint were validly and timely served within the meaning of Section 10(b) of the Act. *Peterson Construction Company, Inc.*, 106 NLRB 850 (1953), and *American Steamship Company, a subsidiary of General American Transportation Corporation*, 222 NLRB 1226 (1976).

Accordingly, counsel for Respondent's motion to dismiss the complaint, or for summary judgment, is hereby denied.

C. *An Altercation With Some Physical Contact Between Two Employees During Working Time*

Dischargee Deborah (Debby) Blaydes was employed by Respondent on April 18, 1978, until April 24, 1979. During working time on April 24, 1979, Blaydes testified that they had an extra girl that night and she worked on the assembly line as usual whenever they had an extra girl. She was assigned there by Steve Gay, supervisor of her shift. Another girl was assigned to be relief girl, which involved relieving girls at their work station in order to permit them to go to the restroom or for other personal reasons. Blaydes said one girl hollered back to her for relief, and she went to the girl and told her that she was not relieving and that she would have to wait for the girl who was relieving. Thereafter, Connie Butterly hollered at her, saying Linda had to go to the restroom. Blaydes said she told her that she was not relieving, that Lisa Haddock was, and that she had already sent a message to that effect to Linda. About 10 or 15 minutes later, Blaydes said a spot was coming through on the material and she went to talk to the machine operator about it. Connie Butterly told her again that Linda had to go to the restroom. Blaydes said she told her she was not doing it and that she had sent word by Butterly's husband that she was not relieving. The testimony in this regard is rather conflicting, however, it appears that Butterly told Blaydes not to use her husband as her personal slave or as her messenger boy and, according to Union President Bea Miranda, Connie Butterly told her Blaydes said, "She would take her husband up to the hayloft and show him a good time." Other witnesses testified Blaydes told Butterly "F—— you, and the broom you rode in on." Blaydes testified she could not recall what the conversation was between herself and Connie Butterly at this juncture.[2] Nevertheless, Butterly's husband was a machine operator and he was the one who was supposed to come and get the relief girl whenever one of the employees wanted to go to the restroom.

Butterly left her machine and grabbed Blaydes around the neck, proceeding to choke and scratch her about the neck and face. Machine operator Keith came over and commenced pulling Butterly off Blaydes. The record shows from all testimonial accounts that Blaydes simply tried to block and pull the hands and arms of Butterly in an effort to avoid being hurt, without retaliating in any way with physical force. Subsequently, Supervisor Steve Gay assigned her to a machine and dryer, and another girl continued to serve as relief girl.

Fifteen minutes prior to the end of her shift, Blaydes testified she went to the restroom and, as she was leaving there, Charlene Lewis hollered to her, requesting to be relieved. Lewis continued to holler at her, and Blaydes said she continued walking without responding. Then, Lewis said something to her and she (Blaydes) turned around and made a reply which she cannot now recall, but adding that she did not want to hear what Lewis had to say. Blaydes said she returned to her work station. Lewis stopped her machine and came to her work station and grabbed her around the neck. All testimonial accounts of record clearly show that, while both Lewis and Butterly, respectively, attacked Blaydes by grabbing her around the neck, choking her, scratching her around the neck and face, and/or pulling her hair, Blaydes did not at any time retaliate against them physically. Blaydes simply tried to defend herself by holding the hands and arms of Butterly and Lewis.

The testimonial accounts nevertheless show that, during their altercation, Blaydes told Butterly and Lewis, "F—— you, and the broom you rode in on."[3]

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[2] Although Blaydes said she did not recall telling Butterly, "F—— you," or the remarks in reference to taking Butterly's husband up in the hayloft, I nevertheless credit Miranda's testimony because I was persuaded by her demeanor as well as the unobjected to testimonial reports of participants in the grievance meetings that Blaydes made such a remark, as well as telling Butterly, "F—— you, and the broom you rode in on." Moreover, Blaydes did not categorically or convincingly deny she made the former remarks.

[3] Although Blaydes impliedly denied that she used such language, I was persuaded by her demeanor while testifying, as well as by the consistent testimonial accounts of what transpired in the grievance meetings,

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Blaydes also testified that Supervisor Gay was one of the persons who separated her and Lewis, and she asked him if she was going to be fired and Gay said he did not know, he would have to talk with management. On the next day, April 25, 1979, Supervisor Gay gave her a written warning and advised her she was fired. Charlene Lewis and Connie Butterly were also fired on the same day.

D. *Grievance Committee Meetings and Union Membership Meeting in Reference to Dischargee Deborah Blaydes' Grievance*

A composite of the essentially corroborated testimonial accounts of what was discussed, and what was generally understood and agreed upon during three grievance committee meetings and two union membership meetings, with respect to the grievances filed by Deborah (Debby) Blaydes and Charlene Lewis, is as follows:

Present at the *first*-step grievance committee meeting in or about early May 1979 were: Paul Moritz, plant manager, Supervisor Steve Gay, for Employer, union officials Bea Miranda, Jerilene Miller, and Mary Shirley, for the Union, and grievant Deborah Blaydes. After Blaydes told her version of the April 24 incidents, as she previously testified herein, Supervisor Steve Gay said his investigation of the incidents indicated dischargee Connie Butterly had attacked Blaydes and the former acknowledged she was in the wrong.

A concensus of the grievance committee, as did a consensus of members at a May union meeting, concluded that dischargee Butterly was the aggressor in the incident between Blaydes and Butterly; that dischargee Charlene Lewis was the aggressor in the incident between Blaydes and Lewis; and that Blaydes was passive and only defensive in blocking or trying to remove the hands and arms of Butterly, and later, the hands and arms of Lewis from around her neck, in an effort to prevent them from choking her, scratching her face and neck, or pulling her hair. It was the view of the grievance committee that Blaydes had been assaulted by Butterly and Lewis, respectively, and that Blaydes did not retaliate, and therefore, should not have been fired.

Plant Manager Moritz then offered Blaydes her job back and Mary Shirley said it was company policy to discharge both or all employees involved in a fight. Moritz nevertheless again offered Blaydes her job or stated he wanted to reinstate her. Mary Shirley said, "No," the Company had to take both Blaydes and Butterly back, or neither one. Charlene Lewis was not present and the committee wanted to hear her version of the incident, so the meeting was adjourned.

Present at the *second*-step grievance committee in or about late May 1979 were: Plant Manager Paul Moritz, Plant Supervisor Harold Carpenter, and Second Shift Supervisor Steve Gay, for Employer; Business Agent George Meyer, Bea Miranda, Mary Shirley, and Meg King, for the Union; floorlady Kathy Heatherly, and grievant Deborah Blaydes. Bea Miranda announced that Charlene Lewis would not be present because she was in the hospital. Blaydes was asked to tell her story and she did, essentially as she testified in this proceeding. Supervisor Gay told his story, essentially as he did in the first grievance meeting. A concensus of the committee again concluded that Butterly was the aggressor and Lewis was the aggressor, respectively, in each instance with Blaydes, who was the passive victim in each attack.

Thereafter, Plant Manager Paul Moritz said he would reinstate Blaydes to her job, but not Charlene Lewis, because she was a troublemaker. Plant Supervisor Harold Carpenter said he thought both Blaydes and Lewis should be reinstated. Mary Shirley said both should be reinstated or neither, in accordance with company policy. Business Agent Meyer said he could not make a decision until he heard Lewis' version of the incident. Thereupon the meeting was adjourned.

Present at the *third*-step grievance meeting on or about June 7, 1979: Business Agent George Meyer, Bea Miranda, Jerilene Miller, Meg King, and the testimony is conflicting as to whether Mary Shirley was present, for the Union. Plant Supervisor Harold Carpenter and Plant Manager Paul Moritz were present for Employer, and grievant Charlene Lewis. Grievant Blaydes was asked to leave before the meeting started because the committee had already heard her version. Lewis told her version of the incident which was essentially the same as Blaydes' testimonial account herein. The concensus of the committee was the same as it was in the two prior grievance meetings, with respect to what each dischargee did. Business Agent Meyer asked to have Blaydes reinstated to her job and Mary Shirley said, "If you're gonna bring one of them back, bring 'em both." Carpenter said he would have brought Blaydes back but now he would have to take it to the Company (Employer). The meeting was adjourned. Subsequently, Carpenter did advise the Union, in writing, pursuant to its request, that both grievances (Blaydes and Lewis) were denied by Employer.

There was a union membership meeting in early July 1978, and Deborah Blaydes, Mary Fields, Bessie Markham, George Meyer, Mary Shirley, and Bea Miranda were present. Blaydes told Shirley she (Shirley) cost her (Blaydes) her job. An argument ensued between Blaydes and Shirley and Blaydes got angry and left the meeting. Before leaving, she asked Meyer was the Union going to process her grievance to arbitration and Meyer said he did not know. Since the Union was advised by Employer (Carpenter) that the grievances (of Blaydes and Lewis) were denied, no action was taken by the Union to process Blaydes' grievance to arbitration, pursuant to the contract. In reference to the grievances, Mary Shirley and Meg King testified that *the job of the Union is to try to have the discharged employees reinstated.*

Supervisor Carpenter testified that the Union never contacted him about taking Blaydes' grievance to arbitration. He further testified undisputedly that Blaydes' grievance was denied. It was determined at the last grievance meeting that the Union would not allow Employer to reinstate Blaydes without reinstating Lewis and Butterly, and "I had no alternative but to deny the griev-

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that Blaydes did use the above language towards Butterly and Lewis. Consequently, I discredit Blaydes' denial and credit the testimony that she used said language.

ances of all three dischargees." Carpenter continued to testify in this regard as follows:

> Q. What do you mean by you had no alternative?
> A. Well, the Union says we either take none or all. We wasn't going to take them all, so we denied the grievance and didn't take anybody. . . .
> Q. Now, you have mentioned the fact that you had no alternative in view of what we have discussed here, you had no alternative but to fire all three. What do you mean you had no alternative? What would prevent you from reinstating?
> A. Not to hire her.
> Q. What do you mean, you had no alternative?
> A. In other words, the union said take them all or none.
> Q. Yes?
> A. We were willing to take Debby back. When they said all or none, we said if we couldn't take just her back, we would take none.
> Q. Was there anything that would prevent you from taking Debby back?
> A. We'd have more problems with the union.

Additionally, according to the undisputed testimony of Carpenter, Employer's policy simply says, "all parties involved in a fight will be discharged." He said, "It does not say, all or none may be kept or rehired."

Analysis and Conclusions

Section 8(b)(1)(A) of the Act provides, in part as pertinent herein, as follows: "It shall be an unfair labor practice for a labor organization or its agents—to restrain or coerce employees in the exercise of the rights guaranteed in section 7."

In construing the application of Section 8(b)(1)(A) of the Act, the U.S. Supreme Court and the Board have held that a union with "the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members, without hostility or discrimination towards any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca et al.* v. *Sipes*, 386 U.S. 171 (1967), and *Miranda Fuel Company, Inc.*, 140 NLRB 181 (1962).

In the instant case, it is unequivocally clear from the uncontroverted evidence of record that, in each of the three grievance committee meetings, Employer was of the view that Deborah Blaydes was the passive victim of the attacks of Butterly and Lewis, and thereupon offered to reinstate Blaydes but not Charlene Lewis. Butterly did not pursue a grievance, so some members of the Union (Mary Shirley) insisted that Emloyer reinstate Blaydes and Lewis, or neither.

Although it was established that Employer had a policy which provided that all employees involved in a fight will be discharged, the word "fight" was not defined and the policy did not prescribe conditions upon which Employer would retain or reinstate an employee who was involved in a fight. Notwithstanding the absence of such a definition, the evidence is clear that, at least with respect to Deborah Blaydes, Employer does not equate a passive victim of an attack with physical force as an employee involved in a fight. Even if Blaydes' foul language to Butterly and Lewis actually provoked them, words alone do not constitute an assault. Moreover, such words cannot be asserted in self-defense to justify physical attack upon a person.

Employer's view of Blaydes' part in both incidents is consistent with the common understanding of the word "fight"—to take part in a physical struggle,[4] as distinguished from "altercation"—an angry or heated argument.[5] Apparently Blaydes and Lewis were discharged before all of the details of each incident were known by Employer. However, the record shows that after Employer was satisfied that Blaydes was a passive victim in both episodes, it immediately applied its policy with a construction that a passive nonretaliating victim was not what it meant by being involved in a fight. Nevertheless, some union members (Shirley and King) ignored Employer's construction of its policy and its decision to reinstate Blaydes, and continued to maintain that Blaydes was involved in two fights and insisted that Employer reinstate Blaydes and Lewis, or neither of them.

When Employer learned that some union members of the grievance committee were not relenting to Employer's offer to reinstate Blaydes, but not Lewis, it gave in to the Union's alternative and did not reinstate Blaydes or Lewis. As Plant Supervisor Harold Carpenter testified, Employer did not want to have problems with the Union so it opted not to reinstate either employee.

At the July union meeting, Blaydes asked Business Agent George Meyer whether her grievance was being processed to arbitration pursuant to the arbitration provision of the contract. Meyer replied he did not know, he would have to think about it. Blaydes' grievance was not processed to arbitration in accordance with the arbitration provision of the contract, and Respondent is not shown to have made an effort to do so. Consequently, under the foregoing circumstances, I find the evidence sufficient to support a conclusion that Respondent refused to accept Employer's offer to reinstate Blaydes. Its failure to process her grievance to arbitration was therefore arbitrary conduct, having a coercive and restraining effect upon the exercise of employees' rights protected by Section 7, and in violation of Section 8(b)(1)(A) of the Act.

Additionally, I find that Respondent's failure to process Blaydes' grievance to arbitration, and its "squeeze play" of insisting Employer reinstate Blaydes and Lewis, the established aggressors, or neither of them, constituted a breach of Respondent's fiduciary duty to fairly represent Blaydes, in violation of Section 8(b)(1)(A) of the Act.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close,

[4] "Webster's New World Dictionary" (2d Ed. 1972).
[5] "Webster's New World Dictionary," *supra*.

intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Having found that Respondent has engaged in unfair labor practices warranting a remedial order, I shall recommend that it cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

It having been found that Respondent has restrained and coerced its members by repeatedly and arbitrarily refusing to accept Employer's offer to reinstate dischargee Deborah Blaydes, unless Employer also reinstate dischargee Charlene Lewis, or neither employee, and finally to further process Blaydes' grievance to arbitration; that Respondent also further coerced its members by breaching its fiduciary duty fairly to represent her, all in violation of Section 8(b)(1)(A) of the Act, the recommended Order will provide that Respondent cease and desist from engaging in such unlawful conduct, and that it promptly request Employer to reinstate Deborah Blaydes to her former position or, if such position no longer exists, to a substantially equivalent position, or, if Employer refuses to reinstate Blaydes, Respondent should request Employer to process a grievance over said employee's discharge and pursue such grievance in good faith and due diligence, including permitting Blaydes to have counsel or other representative of her own choosing during such grievance arbitration proceeding, and reimburse Blaydes for the reasonable cost thereof, and Respondent shall make Blaydes whole for any loss of earnings she may have suffered as a result of her discharge on April 25, 1979, until such time as Blaydes is reinstated by Employer, or said employee obtains other substantially equivalent employment.

Upon the basis of the above findings of fact and upon the entire record of this case, I make the following:

CONCLUSIONS OF LAW

1. Leshner Corporation, Employer herein, is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Local Union 148T, AFL-CIO-CLC, Respondent herein, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. By repeatedly and arbitrarily refusing to accept Employer's offer to reinstate dischargee Deborah (Debby) Blaydes, and failing to process her grievance to arbitration, Respondent violated Section 8(b)(1)(A) of the Act.

4. By repeatedly and arbitrarily failing to process dischargee Deborah (Debby) Blaydes' grievance to arbitration, Respondent breached its fiduciary duty fairly to represent Deborah (Debby) Blaydes, in violation of Section 8(b)(1)(A) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]